

In re) Fair Hearing No. 9385
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Appeal of)

The petitioner appeals the decision by the Department of Social Welfare denying his application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

The petitioner is a 31-year-old man with a G.E.D. education. He has worked at a variety of unskilled jobs. He last worked as a housekeeper at a hospital from May until July, 1989.

His chiropractor has diagnosed the petitioner's condition as "acute lumbar facet jamming syndrome and hip strain." Although the petitioner states that his condition has forced him to give up his job at the hospital, he does not maintain that he is unable to perform sedentary work.

The limited medical evidence of record (office notes from the petitioner's chiropractor and essentially-negative X-ray findings) indicates that the petitioner has not

followed up on basic medical advice offered by his doctors. There is no basis in the evidence to conclude that the petitioner is incapable of performing at least sedentary work.²

ORDER

The department's decision is affirmed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

The regulations also provide that an individual of the petitioner's age, education, and work experience, who retains a residual functional capacity to perform sedentary work³ cannot be considered disabled. 20 C.F.R. § 404, Subpart P, Appendix II, Rules 201.24 - 201.29. Since the petitioner does not maintain and the evidence does not support a finding that he is unable to perform sedentary work, the department's decision is affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

FOOTNOTES

¹The chiropractor's report states that the petitioner's efforts at self-treatment have probably worsened his condition.

²When the hearing officer suggested that the petitioner seek the services of vocational rehabilitation, the petitioner stated he had had an unsatisfactory prior experience with that agency. The hearing officer advised the petitioner to consult with Vermont Legal Aid if he is not satisfied with either this decision or his prior contact with Vocational Rehabilitation.

³See 20 C.F.R. § 416.967(a).

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